IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2002

CORAM:

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.No.1232 of 2001

A.I. Vijayakumar .. Petitioner

Vs.

1. The Labour Court,
Vellore.

2. The Management
CMC Hospital,
Vellore. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.R.S.Pandiyaraj

For respondents : Mr.Sanjay Mohan for
M/s.Ramasubramaniam Associates

: O R D E R

Petitioner has filed this writ petition seeking to issue a writ of certiorarified mandamus calling for the records relating to the orders of the first respondent in C.P. No.213 of 1996 dated 29.4.1999 in respect of the payment of pension to the petitioner and quash the same and consequently direct the second respondent to pay pension to the petitioner.

2. The petitioner's case is that he was employed in the second respondent Management initially as a typist from 17.7.1960 and thereafter was promoted as a Cashier and thereafter as an Accountant, and on completion of 20 years of service when he became eligible for pension and other benefits, enjoined with the assignment, the petitioner, along with 20 others, got terminated for certain alleged union activities which, on being challenged, went upto the Supreme Court and the Hon'ble Supreme Court was pleased to appoint an Arbitrator to go into the correctness of the termination order passed by the second respondent Management appointing His Lordship Justice S.Natarajan as the arbitrator and the learned judge has also passed his award dated 23.3.1994, the operative portion of which is extracted hereunder:

"In the result, there will be an award in favour of the workers in the following manner:

1. the management's action in terminating the services of all the workers except D.Sigamani was not in accordance with law.
2. The management is therefore bound to pay back wages to all the twenty workers and are liable to reinstate them except Christy who has died and Vijayakumar who was superannuated or in the alternative pay compensation to the workers towards back wages in lieu of reinstatement.
3. As I have held that since the management institution is a hospital and as such it would be against the interests of the patients entering the hospital for treatment if management-labour problems crop up due to reinstatement of the workers, the Management is called upon to pay the

percentage of back wages fixed by me for the period of nonemployment of the workers and in addition pay them the salary for the number of years determined by me in lieu of reinstatement benefits."

3. The petitioner, stating that since he attained the age of superannuation even a couple of years prior to the award, the arbitrator was not in a position to decide about the pension and other retiral benefits of the petitioner, and therefore, claiming the same, he has come forward to file this writ petition seeking the relief as prayed for supra.

4. The first respondent, Labour Court, Vellore in its award, has rejected the claim of the petitioner in the following manner.

"In the case of the workers Christy and Vijayakumar the question of compensation in lieu of reinstatement does not arise because Christy has died and Vijayakumar has superannuated. Since they are not getting any benefits in lieu of reinstatement like the other workers, I am differentiating their case and I hold that they should be paid back-wages at the rate of 75% of the total amount instead of 66-2/3% award to the workers No.1 to 16.
Therefore, it is clear that in view of the above quoted specific directions contained in the award of arbitration of the Honourable Apex Court, the petitioner is not entitled for any other relief claim i.e. other than back-wages at the rate of 75% of the total amount instead of 66-2/3% awarded to the workers No.1 to 16."

5. Stating so, the Labour Court would end up saying that the petitioner's prayer for an order of granting pension will not at all arise when there is a specific direction in the award of arbitration and that the petitioner is entitled only for certain limited benefits i.e. 75% of the back-wages for non-employment period and reinstatement benefits.

6. In the above circumstances, the petitioner would urge this Court to pass an order not only quashing the award of the Labour Court,

but also directing the second respondent to pay pension to him.

7. During arguments, the learned counsel appearing on behalf of the petitioner would interpret the award passed by the Arbitrator to the effect that the award regarding those matters which are to be spelt out as expressly done, leaving the rest of the reliefs drawing the source from the award and ordering positively, since the award does not at all say anything against granting the payment of pension. The learned counsel would further argue that once termination is held illegal, all the other benefits would automatically flow, whether it is openly spelt out or not since only the main issues were solved in the arbitration award. The learned counsel would end up his argument saying that his future lies only in the pensionary benefits that he had served in the management for 32 years. The learned counsel would point out that all the other co-employees, who did not superannuate, but joined duty after the arbitration award, have become eligible for all the benefits, and therefore, would crave to allow the writ petition, setting aside the order of the labour court below.

8. On the contrary, having apprised this court of the facts and the events that followed the disciplinary action till the Arbitrator was appointed, the learned counsel for the respondents would point out that the award was passed by the Arbitrator appointed by the Supreme Court in March 1994 which says no benefit of reinstatement, but only to pay compensation equivalent to 75% of back -wages, since the petitioner employee had attained the age of superannuation at the time of passing of the award; that the employee filed an application under Section 33C(ii) of the Industrial Disputes Act, before the Labour Court praying for the grant of pension; that the establishment is a medical college and they have a private non-contributory pension scheme by the employees and under this Scheme, there is a power given to the management to decide whether to grant pension in favour of an employee or not, and therefore, after issuing notice and calling for explanation on 14.4.1997, orders were passed stating that they are not giving any pension under the private pension Scheme under their private fund; that accepting these reasons, the learned Judge of the Labour Court has rejected the contention of the petitioner stating that he had not been superannuated in the usual course, but terminated, and the Arbitrator His Lordship Justice S.Natarajan only awarded back-wages and since that order has not been challenged, the same had become final; that the proceedings under Section 33C(ii) is only in execution of the order passed and since the rejection order was not challenged, the labour court decided not to give pension in favour of the petitioner. On such grounds, the learned counsel would pray to dismiss the writ petition.

9. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, it comes to be known that a terminated employee has come forward to claim pension based on the award passed by the sole Arbitrator appointed by the Supreme Court to decide the case of the petitioner and some other's termination from the management and the learned sole

Arbitrator himself being a retired Supreme Court Judge (S.N.J.,) having gone into the facts and circumstances encircling the subject matter of arbitration and the scope of deciding the same pertaining to 21 employees, the petitioner being one among them, the scope of the arbitration being the termination of service of all the workers and the claim for reinstatement in service together with back-wages and all attendant benefits, His Lordship, in consideration of all the factors, had ultimately held the termination illegal and also held that the workers can only be compensated and not reinstated and would further provide 75% of the back-wages, calculating the loss for nonemployment period and reinstatement benefits.

10. It is relevant to point out that the petitioner attained the age of superannuation prior to the passing of the award, and therefore, his case was separately treated. However, the arguments advanced on the part of the learned counsel for the respondent to the effect that the petitioner did not prefer any appeal nor challenged the award and that it has become final, cannot hold water in the sense that since the very pronouncement of the Supreme Court at the time of appointing the arbitrator is specific in stating that 'the award of the learned Judge/Arbitrator shall be final and binding on both parties and shall not be open to challenge'.

11. In the above scenario, when it is argued on the part of the management/R.2 that the provident fund is a private fund created and made up with the contribution of management alone and without any contribution collected from the employees and further in view of the remarks made on the part of the arbitrator to the effect that 'in the light of my conclusion that the workers can only be compensated and not reinstated and the compensation is to be paid to the workers towards back-wages and reinstatement benefits', had not the petitioner been superannuated prior to passing the award, he would not have been reinstated in service so as to become eligible for all pensionary and retiral benefits. Therefore, in view of the fact that the pension fund is not a public fund made from out of the contributions of the management and the employees, but a private fund made out of the contribution of only the management and since the arbitration award directs that the petitioner is only entitled to certain limited benefits as discussed above, no other order requiring the respondents much less directing the management to pay pension to the petitioner could be made and hence, the labour court below has arrived at the only conclusion that could be arrived at, rejecting the plea of the petitioner. Therefore, the interference of this court sought to be made into the well considered and merited order passed by the Labour Court is neither necessary nor warranted in the circumstances of the case.

12. There is no error apparent on the face of the order passed by the Labour Court below nor does it suffer from any legal infirmity or inconsistency nor could the order be held to be bad in any other manner and hence, this Court is inclined to confirm the order of the Labour Court dated 29.4.1999.
In result, the above writ petition fails and the same is

dismissed. The order dated 29.4.1999 made in C.P. No.213 of 1996 by the Labour Court, Vellore, is hereby confirmed. No costs.

gs.

21.2.2002

Sd/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

gs.

V.KANAGARAJ,J.

Order in

W.P.No.1232 of 2001

21.02.2002